

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 1042 OF 2005

Dagadu Ramchandra Pandhare ... Appellant

V/s

Maruti Janardan Padhare ... Respondent

Mr. M.R. Deshpande for the appellant.

**CORAM: P.V. KAKADE, J.
DATED: 21ST SEPT., 2005**

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur dismissing the appeal of the plaintiff and confirming the judgment and order passed by the Civil Judge, J.D., Pandharpur decreeing the plaintiff's suit to the effect that the sale deed dated 2.1.1960 executed by the plaintiff's mother in favour of the defendant is null, void and ineffective against the interest of the plaintiff and, therefore, direction was issued to the defendant to hand over possession of the suit field to the plaintiff excluding the portion which is already in possession of the plaintiff out of the suit field.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for possession of the suit property and for declaration that the suit sale deed dated 2.1.1960 is not binding on his interest which was executed by his mother while he was minor and, therefore, it was null and void. The suit property consists of Gat No.1/A admeasuring 4 Hectors and 24 Ares at village Shankargaon to the extent of 6 acres from eastern side belonging to the plaintiff. It was his ancestral property. When he was minor, the name of his mother was shown in the record. Rights of suit field as his guardian though his father was alive. On 2.1.1960, the plaintiff's mother was in need of money and she borrowed amount of Rs.1000/- from the defendant and executed sale deed of the suit field in favour of the defendant towards the security of loan amount and it was agreed between them that out of 6 acres field, 3 acres field should be cultivated by the defendant till the repayment of loan and thereafter the defendant should reconvey the entire 6 acres field in favour of the plaintiff and accordingly 3 acres field was given in possession of the defendant. According to the plaintiff, there was no need for the plaintiff's mother

to sale the suit field to the defendant for any legal necessity for herself or her family nor the sale deed was intended to be acted on either party. At the time of the so called sale deed, price of the suit field was around Rs.10,000/- and not Rs.1,000/- as shown in the sale deed. After attaining majority by the plaintiff, he asked the defendant to receive the amount of Rs.1000/- and hand over the possession of 3 acres field, but the defendant flatly refused for it. Hence the suit is filed.

4. The defendant resisted the suit inter-alia denying all the allegations on the ground that the suit transaction was outright sale executed by mother of the plaintiff in her capacity as natural guardian and, therefore, it was legal and valid and as such the suit was sought to be dismissed.

5. The learned Trial Judge on the basis of available evidence adjudicated the dispute on merits. It was held that the plaintiff had proved that his mother had executed sale deed as security for loan amount of Rs.1000/-. It was further held that the plaintiff was entitled for declaration and possession of the suit field. The defendant also raised the issue of

limitation and, therefore, the learned Trial Judge held that the suit was not barred by limitation and decreed the suit.

The appeal was carried to the District Court at Pandharpur. The learned Addl. District Judge, after hearing both parties came to the conclusion that the findings recorded by the learned Trial Judge were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant vehemently urged that the suit was barred by law of limitation by virtue of Art. 60 of the Limitation Act. It was further held that the Court below has decreed the suit on the basis of provision of Sec.8 of Hindu Minority and Guardianship Act, 1956. However, having considered the provision of Sec. 11 of the Hindu Minority & Guardianship Act, the defacto guardian is not to deal with the minor's property and, as such, the indulgence is sought against the findings recorded by both the Courts below.

7. In this regard, it must be noted that the provision of Sec.8 of the Hindu Minority & Guardianship Act, 1956 is very much clear which deals with powers of natural guardian. Said provision states that the property belonging to the minor could not be sold by the natural guardian without previous permission of the Court. Admittedly, in this case, no Court permission is obtained as contemplated under the said Act. It is also to be noted that the father of the plaintiff was alive at the time of execution of the sale deed and inspite of this aspect it was submitted on behalf of the appellant that the mother has acted as de-facto guardian. In this regard provision under Sec.11 of the Hindu Minority & Guardianship Act is clear which stipulates that after the commencement of the Act no person shall be entitled to dispose of, or deal with the property of a Hindu minor merely on the ground of his or her being the de-facto guardian of the minor. In this regard it also must be noted that it was submitted on behalf of the appellant on the basis of the ruling of the Supreme Court in the case of **Githa Hariharan & anr. v/s Reserve Bank of India & anr.**, reported in 1999 (2) Mh.L.J. 703, that -

"Mother being a recognised natural guardian of

minor, can act validly on behalf of the minor as the guardian if the father is wholly indifferent to the matters of the minor even if he is living with the mother or if by virtue of mutual understanding between the father and the mother, the latter is put exclusively in charge of the minor, or if the father is physically unable to take care of the minor either because of his staying away from the place where the mother and the minor are living or because of his physical or mental incapacity."

On perusal of the record, it is quite clear that this rule is not applicable to the present case clearly because there is no evidence on record showing inability or indifferent behaviour on the part of the father of the plaintiff at the time of execution of the sale deed. It was submitted on behalf of the appellant that the father himself is a consenting party to the sale deed and, therefore, it cannot be said that only because mother has executed the sale deed, it is rendered illegal. However, in this connection, it must be noted that, be it a mother or father, they cannot escape the mandatory provision of Sec. 8 of the said Act which

contemplated previous permission of the District Court to effect the sale of the minor's property which is not the case here and, therefore, in my view, both the Courts below have correctly adjudicated the dispute in terms of Sec.8 of the said Act holding that the sale deed executed by the guardian i.e. mother of the plaintiff, is not illegal and, therefore, not binding upon the plaintiff.

8. It was further urged that the provision of Art.60 of the Limitation Act should have been invoked by the Courts below which gives the limitation of three years from the date of attaining majority of the minor in order to seek relief of such nature. In this regard, the lower appellate Court has observed that the plaintiff has come with the case that the transfer is made by his mother who had no authority to transfer and, therefore, the transaction is void and not binding on him. Further, the plaintiff has sought possession on that count and, therefore, the suit for possession would be covered by Art. 65 of the Limitation Act in which case the limitation would run from commencement of the adverse possession in the defendant. Therefore, when the plaintiff has title to the suit property, it is only extinguished on the execution of adverse possession by

the defendant.

In this regard, it must be noted that apart from the observations made by the lower appellate Court, the fact remains that the suit is basically for reconveyance of the property and consequent possession thereof and, therefore, in my view, the cause of action is governed by the provision of Art. 65 of the Limitation Act and thus within limitation.

9. In view of this position, the appeal has no merit and, therefore, stands dismissed with no order as to costs.

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